UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NANCY G. KNUDSEN, as personal representative for the Estate of Phillip S. Knudsen, deceased,

Plaintiff,

v.

CITY OF TACOMA, a municipal corporation under the laws of the State of Washington; JAMES L. WALTON, in his individual capacity; City of Tacoma Council Person KEVIN PHELPS, in his individual capacity; Former City of Tacoma Council Person SHARON McGAVICK, in her individual capacity; RICK TALBERT, City of Tacoma Council Person in his individual Capacity; Former City Attorney for the City of Tacoma ROBIN JENKINSON, in her individual capacity; and "JOHN and JANE DOES" 1 through 10 in their individual capacities,

Defendants.

Case No. C04-5850FDB

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS OF CONSPIRACY, DEFAMATION & INVASION OF PRIVACY AND DIRECTING ENTRY OF JUDGMENT FOR DEFENDANTS

INTRODUCTION

Phillip S. Knudsen was appointed Human Resources Director of the City of Tacoma in 1999 and he was terminated in June 2004 by City Manager James Walton. A few months after James Walton's appointment as Tacoma City Manager in May 2003, an employee in the Human Resources Department, Lela Fishe, alleged that the pass point for the civil service examination had been changed after the identities of the applicants had been disclosed for the sole purpose of

ensuring that one particular candidate passed the test, and that Knudsen knew and participated in this with his assistant director. (Walton Aff. ¶ 9, Ex. 1.)

In February 2004, while investigating the pass point change incident, Walton was advised of a second allegation against Knudsen. The second allegation was that Gary Armfield, a manager with Tacoma Public Utilities came forward through the Legal Department to report that Knudsen tried to place Mr. Armfield on an interview panel so that he could ensure that a particular applicant did not advance during the interview process.

Walton placed Knudsen on paid administrative leave pending the outcome of the two investigations. The investigator concluded that the two incidents happened as alleged, and Knudsen admitted that he had ordered the pass point to be changed, even over the objections of the Assistant Human Resources Director (Walton Aff., Ex. 3.), and he admitted to the acts alleged by Gary Armfield, as well. (Walton Aff., Ex. 4.) Mr. Walton found Knudsen's conduct to be unacceptable and on June 24, 2004 he terminated his employment with the City. (Walton Aff., ¶¶ 24-25, Ex. 7 and 8.)

Defendants [the City] move for summary judgment on Plaintiff's claims of Section 1983 conspiracy, tort claims for civil conspiracy, defamation, and false light invasion of privacy.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if the moving party establishes that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). If the moving party shows that there are no genuine issues of material fact, the non-moving party must go beyond the pleadings and designate facts showing an issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). Inferences drawn from the facts are viewed in favor of the non-moving party. *T.W. Elec. Service v. Pacific Elec. Contractors,* 809 F.2d 626, 630-31 (9th Cir. 1987).

Summary judgment is proper if a defendant shows that there is no evidence supporting an element essential to a plaintiff's claim. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Failure of

proof as to any essential element of plaintiff's claims means that no genuine issue of material fact can exist and summary judgment is mandated. *Celotex*, 477 U.S. 317, 322-23 (1986). The nonmoving party "must do more than show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

DISCUSSION

Plaintiff Knudsen states in his response to the City that he will not object to the entry of an order dismissing the defamation and false light invasion of privacy claims. [Plaintiff's Combined Memo. p. 10, ll. 4-6.]

Knudsen argues that

> direct participation or authority to take an adverse action is not a prerequisite to liability under 42 U.S.C. § 1983, and liability can attach when someone 'sets into motion a series of acts by others which the actor should have know [sic] would cause others to inflict Constitutional harm. See Johnson v. Duffy, 488 f.2d 740, 743-4 (9th Cir. 1978), see also Harris v. Roderick, 126 F.3d 1189 (9th Cir. 1997).

(Plaintiff's Combind Memo, p. 12.) Knudsen asserts that the named defendants other than Walton "Mr. Walton's efforts to first harass Mr. Knudsen and to ultimately come up with pre-textural [sic] grounds for his termination." *Id.* Also, Knudsen asserts that Defendant Robin Jenkinson and Elizabeth Pauli (not a named defendant herein) "also set into motion a series of events that ultimately led to Plaintiff's termination" and "[t]hey did so by failing to be honest with respect to what occurred at the April 25, 2003 meeting," and thus "generated a tremendous amount of hostility towards the Plaintiff, particularly on the part of the counsel [sic] members who are named as Defendants herein." *Id.*

Knudsen goes on to say that additionally a conspiracy theory is fully applicable to the Section 1983 claim, as conspiracy serves to broaden the scope of individuals who can be held accountable for a specific crime or tort. Knudsen cites *Gilbrook v. Westminster*, 172 F.3d 839 (9th Cir. 1999) as an example of "utilization of a conspiracy theory as a vehicle to hold accountable elected officials who participate or influence an adverse employment decisions, that are violative of a public employee's First Amendment rights." Knudsen concludes by stating that

"there is substantial evidence to indicate that the City counsel [sic] Defendants either set into motion or conspired to discredit the Plaintiff and influenced Mr. Walton to take adverse employment actions against the Plaintiff." (Plaintiff's Combined Memo, p. 14, ll. 23-24.)

To prove conspiracy under Section 1983, the plaintiff must prove "'an agreement or "meeting of the minds" to violate constitutional rights.' To be liable, each participant must at least share the common objective of the conspiracy." *United Steelworkers of America v. Phelps Dodge Corporation*, 865 F.2d 1539, 1540-41 (9th Cir. 1989). Also, the plaintiff must prove an action taken in furtherance of the purported conspiracy. *See Krug v. Imbordino*, 896 F.2d 395, 397 (9th Cir. 1989). Finally, the plaintiff must prove that there was an actual deprivation of his constitutional rights. *See Adickes v. Kress & Co.*, 398 U.S. 144, 150 (1970).

The Court has already concluded in the Order Granting Defendants' Motion for Summary Judgment on Plaintiff's First Amendment, Racial Discrimination, and Wrongful Discharge Claims, that there was no deprivation of constitutional rights. Knudsen has set forth no evidence that the individual defendants formed a tacit or express agreement to retaliate against him in response to his exercising his free speech rights. Knudsen was not terminated until the City Manager, Walton, received the report of two independent investigators about Knudsen's misconduct. Knudsen has failed to adduce sufficient evidence to support his Section 1983 conspiracy claim.

To establish a claim of civil conspiracy, a plaintiff must prove that (1) two or more people acted together to accomplish an unlawful purpose or acted together to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the conspiracy. *Newton Insurance Agency & Brokerage, Inc. v. Caledonian Insurance Group, Inc.*, 114 Wn. App. 151, 160, 52 P.2d 30 (2002). "[T]he existence of an alleged civil conspiracy must be established by *clear, cogent, and convincing evidence*." (Emphasis in original) *Corbit v. J.I. Case Co.*, 70 Wn.2d 522, 529, 44 P.2d 290 (1967). "The test of the sufficiency of the evidence to prove a conspiracy is that the circumstances must be inconsistent with a lawful or honest purpose and reasonably consistent *only* with the existence of a conspiracy." (Emphasis in original) *Id.*

Knudsen has not adduced sufficient evidence to sustain his burden on this motion for summary judgment. Knudsen's contentions that the City Council Defendants and the City Attorney set in motion a series of events that led to his termination falls far short of the quality and sufficiency of evidence required for civil conspiracy. Finally, as stated earlier, no deprivation of constitutional rights has been found.

CONCLUSION

Accordingly, for the forgoing reasons, Defendants must be granted summary judgment as to Knudsen's claims of conspiracy, defamation, and false light invasion of privacy. NOW, THEREFORE,

IT IS ORDERED:

1. Defendants' Motion for Summary Judgment on Plaintiff's Claims of Conspiracy, Defamation, and Invasion of Privacy [Dkt. # 41] is GRANTED and these claims are DISMISSED against all defendants.

2. As this Order disposes of all claims in this cause of action, the Clerk is directed to enter Judgment for Defendants in this case.

DATED this 12th day of December, 2005.

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE